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# Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 May 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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# INDONESIA: Corruption and bribery threatening judicial independence

The Asian Legal Resource Centre (ALRC) wishes to inform the UN Human Rights Council (UNHRC) about the lack of accountability and independence of Indonesia's judges and lawyers. One of the most serious problems threatening the Indonesian judiciary is corruption, involving judges, court clerks and lawyers. Not only does such corruption have a negative impact on the accountability of judges and lawyers, but it also seriously undermines fair trial and due process.

So far, since Justice Hatta Ali became the chairman of the Supreme Court in March 2012, in total 25 judges and court clerks have been found involved in corruption and bribery cases. One prominent case occurred in February 2018, when the Chief Justice Sudiwardono of Manado High Court, North Sulawesi Province, was arrested by the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi* - KPK) due to his involvement in a bribery case, to mitigate the verdict of a defendant, Mrs. Marlina Moha Siahaan, regent of Bolaang Mongondow, North Sulawesi Province. The KPK arrested the Chief Justice *in Jakarta along with Mr. Aditya Moha, a Parliament member and son of the defendant, who provided the money.* The KPK seized money amounting to 101,000 Singaporean Dollar and IDR 1 billion. The money was divided into three parts, one of which was found in a car.

Subsequently, on 12 March 2018, the Corruption Eradication Commission arrested several officials of the Tangerang District Court (*Pengadilan Negeri Tangerang*) on Monday night for alleged bribery in a civil case. The arrested officials were Justice Wahyu Widya Nurfitri and court clerk Tuti Atikah. Moreover, the KPK also arrested two lawyers who bribed the judge, namely Attorney Agus Wiratno and Attorney HM Saipuddin. The two lawyers bribed the panel judges in order to influence the verdict with IDR 30,000,000, as before the trial, advocate Agus Wiratno has been informed by the clerk Tuti Atika that the judge's decision was to reject the lawsuit.

In another case, Mr. Fredrich Yunadi, a former attorney of graft defendant Setya Novanto, spokesperson/chairperson of the House of Representatives (DPR RI), was finally prosecuted at the Anti-Corruption Court. The KPK prosecutors indicted Yunadi for obstructing the anti-graft body's investigation against his former client in a graft case related to the e-ID card procurement project. Yunadi has been accused of manipulation to enable Setya Novanto to be admitted to Medika Permata Hijau Hospital in order to avoid the KPK's investigation. The lawyer reportedly asked doctors to change the diagnosis to road accident, although such an accident had yet to occur. The lawyer also managed to reserve all VIP rooms at the hospital under Setya's name. In addition, the KPK has also named Doctor Bimanesh from Medika Permata Hijau Hospital as a suspect in the case, who will be tried separately.

One of the main factors causing widespread corruption within Indonesia's judicial system is the weak external oversight over the judges and judicial apparatus, such as court clerks. Although Indonesia has had an Independent Judicial Commission (*Komisi Yudisial* - KY) for the last 15 years, its mandate and authority has weakened due to amendments of the law. The Commission does not have enough authority to investigate and ensure punishment to the judges who breach the law; the Commission can merely issue recommendations to the Supreme Court. Moreover, these recommendations are usually ignored or implemented with great delay by the Court. There are strong allegations that Justice Hatta Ali, the current Chairperson of the Indonesian Supreme Court, is reluctant to seriously reform the judicial system. Many public voices, including that of Justice Gayus Lumbuun, a Supreme Court judge, have therefore called for Justice Ali's resignation.

Indonesia's Supreme Court and Judicial Commission must take a proactive approach in dealing with the widespread problem of judicial corruption. The Supreme Court must conduct transparent and credible internal audits to ensure that judges, court clerks and other court officials will not easily get involved in cases of bribery and corruption. High standards of punishment and sanction must be seriously developed and implemented to strengthen judicial reform. Division of labour between the Supreme Court and the Judicial Commission must be made clearer, and all recommendations submitted by the Judicial Commission to the Supreme Court must be seriously examined and followed up. In 2017 for instance, the Judicial Commission recommended the punishment of 58 judges, but the Supreme Court has yet to seriously follow up.

In order to ensure that the problems faced by the Indonesian judicial system are seriously addressed, the Council must urge the Government of Indonesia to:

1. Fully support the Commission Eradication Corruption (KPK) to eradicate corruption and bribery in all judicial stages in Indonesia;
2. Strengthen the mandate and the role of the Judicial Commission to monitor judges as well as involve in the evaluation and examination of its recommendation report submitted to the Supreme Court;
3. Seriously evaluate the Chief Justice of the Supreme Court and develop a better system for recruiting judges and court clerks;
4. Strengthen transparency and accountability of the ethic mechanism within the Supreme Court in dealing with the violation of the code of conduct and violation of the law committed by judges;
5. The Indonesian Bar Association (*Perhimpunan Advocate Indonesia* – PERADI and *Kongres Advokat Indonesia* - KAI) must seriously develop better education and training for lawyers and also develop better ethic mechanism to strengthen the accountability of lawyers; and
6. Invite and cooperate with the Special Rapporteur on the Independence of Judges and Lawyers.